



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 05-95

March 22, 2006

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39, and G.L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2003 and/or 2004.

VOTE AND ORDER TO OPEN INVESTIGATION

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I. INTRODUCTION

Pursuant to Massachusetts law, each common carrier that is engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, (see G.L. c. 159, § 12(d)), must file with the Department of Telecommunications and Energy (“Department”) an annual return for each calendar year by March 31 of the following year “or such subsequent date as in any case, for good cause shown, the department may fix.” G.L. c. 159, § 32; G.L. c. 166, § 11; see Annual Returns, D.T.E. 03-76, at 1, Vote and Order to Open Investigation (2004). Any such common carrier that neglects to file its required annual return by the deadline set by the Department forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed. G.L. c. 166, § 12. Further, if the Department determines that a carrier “unreasonably refuses or neglects to make such return,” the carrier shall forfeit up to \$500 as an additional penalty. Id. If, in the judgment of the Department, a common carrier neglects to file its annual return as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

According to the Department’s records, 15 common carriers of telecommunications services failed to file annual returns for calendar years 2003 and/or 2004. These common carriers are named individually in the Appendix of this Vote and Order. As required by Massachusetts law, each named common carrier was registered to provide telecommunications services within the Commonwealth for the relevant calendar year by having on file with the

Department an approved tariff and statement of business operations. G.L. c. 159, §§ 12, 19; Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-38, at 12 (1994). Hence, all of the named common carriers were obligated to file annual returns for calendar years 2003 and/or 2004.

For each year's filings, the Department's Telecommunications Division provided the named common carriers with three separate notices of the filing requirements¹ and specifically alerted the carriers that the Department would extend the filing deadlines to August 30, 2004, for 2003 returns, and September 16, 2005, for 2004 returns. Nonetheless, according to the Department's records, none of these 15 common carriers have filed the annual returns as required.

II. VOTE TO OPEN INVESTIGATION

Consistent with the above, the Department determines to begin a review as to the named common carriers' failure to file annual returns. Accordingly, on its own motion, the Department votes to open these investigations regarding the 15 named telecommunications common carriers. These proceedings will be docketed under the generic docket number, D.T.E. 05-95, with a sequential number for each individual case, e.g., D.T.E. 05-95-1, D.T.E. 05-95-2. The docket numbers assigned to the proceedings for each individual carrier are listed in the Appendix to this Vote and Order. In this investigation, the Department will determine whether the named common carriers have neglected or refused to file annual returns,

¹ For each year, the third notice outlining the final deadline for filing was sent by certified mail.

and if so, whether the neglect or refusal was unreasonable. G.L. c. 159, §§ 32, 39; G.L. c. 166, §§ 11, 12. In reviewing each named common carrier's obligation to file an annual return for 2003 and/or 2004, the Department may consider, but not limit itself to considering, the extent and nature of the carrier's operations within the Commonwealth as well as the carrier's revenues for the years 2003 and 2004. G.L. c. 159, § 32; G.L. c. 166, § 11; see D.T.E. 03-76, at 3.

The Department will require that any named common carrier that intends to present evidence in these proceedings must notify the Department in writing by Thursday, April 20, 2006, and provide the following additional information:

- 1) State whether the company filed the annual return for relevant calendar year(s) as noted in the Appendix. If so, provide a copy of the annual return(s) and documentation of the filing(s). If not, explain why not, and state whether the failure to file is reasonable.
- 2) State whether the company provided telecommunications services within the Commonwealth during the relevant calendar year(s) as noted in the Appendix.

Should any of the named common carriers fail to respond or to produce the information sought in these proceedings, or otherwise default in its obligation to appear before the Department, the Department may make adverse findings of fact, issue orders against those carriers, and refer the matter to the Attorney General for enforcement. G.L. c. 159, § 39; G.L. c. 166, § 12.

The Department will conduct these investigations as adjudicatory proceedings, as defined in G.L. c. 30A, § 1(1). The proceedings for each common carrier under investigation are to be considered independent proceedings, and each will have a separate evidentiary record. The Department will conduct hearings in this investigation on Thursday, April 27, 2006, at 10:00 a.m. The Department will convene a separate public hearing for each common carrier to receive comments from the public and Legislature. Immediately after each public hearing, the Department will conduct a evidentiary hearing for each individually-named common carrier. Hearings will proceed in order of docket numbers 05-95-1 through 05-95-15 until completed.

The Department invites all interested persons who are substantially and specifically affected by the issues under investigation to petition to intervene in these proceedings. Petitions to intervene in these dockets must be filed with the Secretary of the Department by 5:00 p.m. on Thursday, April 20, 2006, referencing the complete docket number assigned to a specific company.

III. ORDER

Accordingly, the Department

VOTES: To open investigations, docketed as D.T.E. 05-95-1 through D.T.E. 05-95-15, into the failure of 15 common carriers of telecommunications services to file annual returns for calendar years 2003 and/or 2004; and it is

ORDERED: That petitions to intervene in this proceeding and written comments shall be filed with the Secretary of the Department by April 20, 2006; and it is

FURTHER ORDERED: That public and evidentiary hearings in this proceeding will be held on April 27, 2006, at the Department's offices.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Paul G. Afonso, Commissioner

/s/
Brian Paul Golden, Commissioner

APPENDIX

Telecommunications common carriers that have failed to file an annual return
for calendar years 2003 and/or 2004

<u>Common Carrier</u>	<u>Relevant Year(s)</u>	<u>Docket Number</u>
All-Star Acquisition Corporation	2003	05-95-1
Advent Communications, Inc. (formerly Ameritel Telephone Svcs.)	2004	05-95-2
Dark Air Corp.	2004	05-95-3
ECI Communications, Inc.	2004	05-95-4
Megan Corp.	2004	05-95-5
NeTel, Inc.	2004	05-95-6
Norstan Network Services, Inc.	2004	05-95-7
Tristate Bell of Mass, Inc.	2004	05-95-8
Worldnet Communications, Inc.	2004	05-95-9
Atlanta New York Warehouse Outlets, Inc.	2003/2004	05-95-10
Communicate Technological Systems	2003/2004	05-95-11
Communications Billing, Inc.	2003/2004	05-95-12
Ntegrity Telecontent Services, Inc.	2003/2004	05-95-13
Teleconex, Inc.	2003/2004	05-95-14
Vista Group International, Inc.	2003/2004	05-95-15